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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,557	11/28/2005	Bodo W. Lambertz	DD-25017	7025
7590 Olson & Cepuritis, Ltd. 36th Floor 20 North Wacker Drive Chicago, IL 60606				
			EXAMINER	
			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	
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			10/20/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/542,557

Applicant(s)

LAMBERTZ, BODO W.

Examiner

Alissa L. Hoey

Art Unit

3765

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Upon further considerations, prosecution has been re-opened due to the entering of after final amendment of 06/12/09. The after final amendments require a new ground of rejection as detailed below.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambertz (US 6,286,151).

Lambertz teaches the following in figure 1:

1. (Currently Amended) A sock (in particular) for use in athletic activities having a foot portion and a shaft portion (figure 1), the foot portion having a toe area, a heel area, and a tread area between the toe area and the heel area (see figure 1), an air channel (3) extending from the shaft portion to the tread area (figure 1), at least one climate channel (ribbed portion on instep; column 2, lines 4-13) in the tread area (figure 1), communicating with the air channel (3) for removing moisture from the tread area when the sock is worn for athletic activities (figure 1).

2. (Currently Amended) A sock according to Claim 1, characterized in that at least one additional air channel (3, on opposite side of sock: column 1, lines 34-37) are is provided on the inside of the leg and/or on the outside of the leg of the sock, each air

channel being connected to at least one climate channel (ribbed portion) in the tread area (figure 1).

11. (Previously Presented) A sock according to Claim 1, characterized in that the sock is equipped with an X-cross bandage (9).

12. (Previously Presented) A sock according to Claim 1, characterized in that the sock has padding (5, 10, 11).

3. Claims 1, 2 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambertz (US 6,286,151).

Lambertz teaches the following in figure 8:

1. (Currently Amended) A sock (in particular) for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area, a heel area, and a tread area between the toe area and the heel area (figure 8), an air channel (3) extending from the shaft portion to the tread area (figure 8), at least one climate channel (ribbed portion of the instep: column 2, lines 4-13) in the tread area, communicating with the air channel (3) for removing moisture from the tread area when the sock is worn for athletic activities (figure 8).

2. (Currently Amended) A sock according to Claim 1, characterized in that at least one additional air channel (14) are is provided on the inside of the leg and/or on the outside of the leg of the sock, each air channel being connected to at least one climate channel (ribbed portion of the instep) in the tread area (figure 8).

9. (Previously Presented) A sock according to Claim 2, characterized in that the air channel (3) is made of a climate-regulating mesh knit fabric (column 1, lines 26-37).

4. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambertz (US 6,286,151).

Lambertz teaches the following in figure 8:

1. (Currently Amended) A sock (in particular) for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area, a heel area, and a tread area between the toe area and the heel area (figure 8), an air channel (14) extending from the shaft portion to the tread area (figure 8), at least one climate channel (3) in the tread area, communicating with the air channel (14) for removing moisture from the tread area when the sock is worn for athletic activities (figure 8).

10. (Previously Presented) A sock according to Claim 1, characterized in that the climate channel (3) is made of climate-regulating mesh knit fabric (column 1, lines 26-37).

5. Claims 1-8, 12-17 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogden (US 5,708,985).

Ogden teaches the following:

1. (Currently Amended) A sock (in particular) for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area, a heel area, and a tread area between the toe area and the heel area (figures 1-5), an air channel (22: fist

side of leg) extending from the shaft portion to the tread area (figures 1 and 2), at least one climate channel (44 or 36) in the tread area (figures 1-5), communicating with the air channel (22) for removing moisture from the tread area when the sock is worn for athletic activities.

2. (Currently Amended) A sock according to Claim 1, characterized in that at least one additional air channel (22: opposite side of leg) are is provided on the inside of the leg and/or on the outside of the leg of the sock (figures 1 and 2), each air channel (22: both sides of sock) being connected to at least one climate channel (36, 44) in the tread area.

3. (Previously Presented) A sock according to Claim 1, characterized in that the climate channels (44 or 36) have a curved shape in the tread area (figures 2 and 3).

4. (Previously Presented) A sock according to claim 2, characterized in that the climate channels (36 or 44) have a curved shape in the tread area (figures 2 and 3).

5. (Previously Presented) A sock according to Claim 1, characterized that the climate channels (36 or 44) are partially tapered (figures 2 and 3).

6. (Previously Presented) A sock according to Claim 1, characterized in that the climate channels (35 or 44) have an essentially circular cross section (figures 2 and 3).

7. (Previously Presented) A sock according to Claim 1, characterized in that the climate channels (44 or 36) are connected to one another through a central channel (50) (figure 5).

8. (Previously Presented) A sock according to Claim 2, characterized in that air channels (22) and the climate channels (44) are made of the same material (column 3,

lines 39-56).

12. (Previously Presented) A sock according to Claim 1, characterized in that the sock has padding (56, 18).

13. (Previously Presented) A sock according to Claim 2, characterized in that the climate channels (36 or 44) are partially tapered (figures 1 and 2).

14. (Previously Presented) A sock according to Claim 3, characterized in that the climate channels (36 or 44) are partially tapered (figures 1 and 2).

15. (Previously Presented) A sock according to Claim 2, characterized in that the climate channels (36 or 44) have an essentially circular cross section (figures 1 and 2).

16. (Previously Presented) A sock according to Claim 3, characterized in that the climate channels (36 or 44) have an essentially circular cross section (figures 1 and 2).

17. (Previously Presented) A sock according to Claim 5, characterized in that the climate channels (36 or 44) have an essentially circular cross section (figures 1 and 2).

21. (Currently Amended) A sock for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area a heel area, and a tread area between the toe area (figures 1-5) and the heel an air channel (22) extending from the shaft portion to the tread area (figures 1, 2 and 5), at least one climate channel (44) in the tread area , communicating with the air channel (22) for removing moisture from the tread area when the sock is worn for athletic activities and further including a plurality of climate channels (44) in the tread area (figure 5), the climate channels being connected to one another through a central channel (50) arranged along the longitudinal central axis of the tread area, the climate channels branching off from the central channel

(figure 5).

22. (Previously Presented) A sock as in claim 21, wherein the climate channels (44) are curved and branch off on both sides of the central channel (50) and extend from the central channel to the outside edge of the tread area (figure 5).

23. (Previously Presented) A sock according to claim 22, wherein the climate channels have an essentially circular cross section (figure 5, identifiers 44).

Response to Arguments

6. Applicant's arguments filed 06/12/09 have been fully considered but they are not persuasive.

Applicant argues that Lambertz fails to teach a climate channel in the tread area of the sock that is connected to an air channel.

Examiner disagrees since Lambertz teaches a climate channel (3 or ribbed portion as defined above) in the tread area (area between the tow and heel), which is connected to an air channel (3 or 14).

Examiner notes that the read area is the area extending from the toe to the heel. The tread area is not limited to the sole of the sock as currently claimed and disclosed.

Therefore, Lambertz teaches the limitations as claimed.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa L. Hoey/
Primary Examiner, Art Unit 3765